

SENATE BILL 2464

By Berke

AN ACT to amend Tennessee Code Annotated, Title 4;  
Title 10; Title 12; Title 20 and Title 39, relative to  
the creation of the office of inspector general.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding the following  
as a new chapter:

4-39-101. There is created as an independent entity of state government the  
office of inspector general for fraud, waste, corruption and abuse within all departments  
and branches of state government.

4-39-102. As used in this chapter, unless the context requires otherwise:

(1) "Construction" means the process of planning, acquiring, designing,  
building, altering, repairing, maintaining, servicing, improving, demolishing,  
equipping or furnishing any structure and appurtenance thereto, including  
facilities and utilities or other improvements of any kind to any real property and  
including, but not limited to, highways, airports, tunnels, sewers or dams;

(2) "Contractor" means any person, corporation, partnership, business,  
union, committee, or other organization, entity or group of individuals;

(3) "Office" means the office of inspector general created by this chapter  
to prevent fraud, waste, corruption and abuse within all departments and  
branches of state government;

(4) "Procurement" means buying, purchasing, renting, leasing or  
otherwise acquiring or disposing of supplies, services, or construction;

(5) "Services" means the furnishing of labor, time, or effort by a  
contractor; and

(6) "Supplies" means all property including, but not limited to, equipment, materials, printing, insurance, and real property.

4-39-103.

(a) The office shall act to prevent and detect fraud, waste and abuse in the expenditure of public funds, whether state, federal, or local, or relating to programs and operations involving the procurement of any supplies, services, or construction, by agencies, bureaus, divisions, sections, departments, offices, commissions, institutions and activities of the state, including those districts, authorities, instrumentalities or political subdivisions of state government, including local governments.

(b) For administrative purposes the office shall be located within the department of finance and administration, however the autonomy of the office and its authority are not affected by this subsection (b), and the department shall have no administrative or supervisory control over the office. The office shall be headed by an inspector general who shall be appointed by a majority vote of the attorney general and reporter, the comptroller of the treasury and the governor for a term of five (5) years.

(c) The inspector general shall be selected without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation or criminal justice administration.

(d) In case of a vacancy in the position of inspector general, the inspector general's successor shall be appointed in the same manner for the unexpired term. No person shall be appointed for more than two (2) five-year terms.

(e) The inspector general may be removed from office, for cause, by a majority vote of the attorney general and reporter, the state auditor, and the governor. Such cause may include substantial neglect of duty, gross misconduct or conviction of a crime. The reasons for removal of the inspector general shall be stated in writing and shall include the basis for removal. The writing shall be sent to the clerk of the senate, the clerk of the house of representatives and to the governor at the time of the removal and shall be deemed to be a public document.

(f) The inspector general is an official in the executive branch as defined in § 3-6-301.

(g) The governor shall annually set the salary of the inspector general, which salary shall not exceed ninety percent (90%) of the salary of the chief justice of the state supreme court.

4-39-104.

(a) Except as may be provided in § 10-7-504, the inspector general shall have access to all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence, including information relative to the purchase of services or anticipated purchase of services from any contractor by any public body, and any other data and material that is maintained by or available to any public body described in § 4-39-103 which in any way relate to the programs and operations with respect to which the inspector general has duties and responsibilities.

(b) The inspector general may request such information, cooperation and assistance from any state, county or local governmental agency as may be necessary for carrying out the duties and responsibilities of the office. Upon

receipt of such request each person in charge of, or the governing body of any public body described in § 4-39-103, shall furnish to the inspector general or the inspector general's authorized agent or representative such information, cooperation and assistance, including information relative to the purchase of services or anticipated purchase of services from any contractor by any public body.

(c) The inspector general may make such investigations, audits and reports relating to the administration of the programs and operations of the applicable public bodies described in § 4-39-103, as are necessary in the judgment of the inspector general, and may conduct an examination of any public documents.

(d) The inspector general shall have direct and prompt access to the head of any public body described in § 4-39-103, when necessary for any purpose pertaining to the performance of the inspector general's duties and responsibilities pursuant to this chapter.

(e) The inspector general may request the production, on a voluntary basis, of testimony or documents from any individual firm or non-governmental entity which relate to the inspector general's duties and responsibilities.

(f) Except as provided in § 10-7-504, the inspector general may require by summons, the production of all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material relevant to any matter under audit or investigation pursuant to this chapter.

(g) Any summons issued pursuant to this section shall be served in the same manner as a summons for the production of documents in civil cases

issued on behalf of the state, and all law relative to the summons shall apply to a summons issued pursuant to this chapter. A trial court may, upon application by the inspector general, issue an order to compel the production of records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material, the failure of which to obey the order shall be punishable by the court as contempt.

(h) Any summons issued pursuant to this section shall not be made public by the inspector general or any officer or employee of the office, nor shall any documents provided pursuant to this section be made public until such time as it is necessary for the inspector general to do so in the performance of the inspector general's duties. The production of such books and papers pursuant to summons shall be governed by the same provisions with reference to secrecy which govern proceedings of a grand jury. Disclosure of the production, attendance, and testimony may be made to the members of the staff of the office as is deemed necessary by the inspector general to assist the inspector general in the performance of the duties and responsibilities of the office in accordance with this chapter, and such members of the staff may be present at the production of records.

4-39-105.

(a) In carrying out the duties and responsibilities described in this chapter, the inspector general shall report to the attorney general and reporter, the United States attorney, or both, whenever the inspector general has reasonable grounds to believe there has been a violation of federal or state criminal law, whereupon the attorney general shall institute appropriate further proceedings.

(b) The inspector general shall refer audit or investigative findings to the state ethics commission, or to any other federal, state or local agency, which has an interest in the findings.

(c) Any referrals made pursuant to this section shall not be made public.

4-39-106. The inspector general shall have the authority to institute a civil recovery action if authorized by the attorney general and reporter. In any case where the inspector general has discovered fraudulent acts and believes that civil recovery proceedings may be appropriate, the inspector general shall refer the matter to the attorney general and reporter. The attorney general and reporter may institute appropriate proceedings, may refer the matter to another state or local agency, may authorize the institution of appropriate civil proceedings by the inspector general, may retain the matter for further investigation, or may remand the matter to the inspector general for further investigation.

4-39-107.

(a) Annually on or before February 1 of each year, the office shall prepare a report summarizing the activities of the office for the prior calendar year. The office may also prepare interim reports. These reports shall be forwarded to the appointing authorities listed in § 4-39-103 and to the general assembly.

(b) The report shall include, but not be limited to:

- (1) A description of significant problems in the areas of fraud;
- (2) Waste and abuse within programs and operations within the jurisdiction of the office;

(3) A description of the recommendations for corrective action made by the office during the reporting period with respect to significant deficiencies in the areas of fraud, waste and abuse;

(4) The identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(5) A summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(6) A summary of any matters concerning the recovery of monies as a result of civil suit by the office of inspector general or a referral to another agency for the purposes of the suit;

(7) A list of each audit report completed by the office during the reporting period; and

(8) A statement of recommendations of amendments to this chapter or the rules, regulations or procedures governing the office which would improve the effectiveness or the operation of the office.

(c) A copy of the report shall be forwarded to the head or governing body of each public body referred to in the report from whom the inspector general requires a response.

(d) The head or governing body of, each public body may comment, within sixty (60) days of receipt of the report, upon any references to the agency contained within the report. The comment, if any, shall be forwarded to the speaker of the senate, the speaker of the house of representatives, and the office.

(e) The report of the inspector general shall be made public on the day of filing; provided, however, that the report shall not list the names of individuals or corporations nor describe them with such sufficient particularity as to readily identify them to the general public in those cases in which no official disposition has been made by the office or the office of the attorney general and reporter or the federal prosecutor.

4-39-108. All records of the office shall be confidential unless, it is necessary for the inspector general to make the records public in the performance of his duties, and shall not be considered public records.

4-39-109.

(a) The inspector general may receive and investigate complaints or information from any public employee concerning the possible existence of any activity constituting fraud, waste and abuse in or relating to programs and operations as described in § 4-39-103.

(b) The inspector general shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the written consent of the employee, unless the inspector general determines the disclosure is necessary and unavoidable during the course of the investigation. The employee shall be notified in writing at least seven (7) days prior to such disclosure.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employees as a reprisal for making a complaint or disclosing information to the inspector general, unless



the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

4-39-110. Whenever the inspector general has reason to believe that a person has information with respect to any matter which is within the inspector general's jurisdiction to investigate, the inspector may require by summons the attendance and testimony under oath of the person. The summons shall be served by the inspector general or anyone duly authorized by the inspector general, in the same manner as a summons for a witness in a civil case issued on behalf of the state, and all law relative to the summons issued in the case shall apply to a summons issued in accordance with this section.

4-39-111. The office shall be created from existing resources of state government including, but not limited to, the positions of assistant inspectors general, chief and deputy counsels, clerks, paralegals, accountants, auditors, financial management analysts and investigators. This section shall also apply to the position of inspector general.

4-39-112. The office is authorized to promulgate rules and regulations to effectuate the purposes of this chapter. All such rules and regulations shall be promulgated in accordance with The Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. Tennessee Code Annotated, Section 4-29-235(a), is amended by adding the following as a new, appropriately designated subdivision:

( ) Office of inspector general, created by § 4-39-101;

SECTION 3. For the purpose of promulgating rules and regulations this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect July 1, 2013, the public welfare requiring it.